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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**DOROTHY E. MAKO and ROBERT
MAKO, SR., h/w**

Plaintiff

CIVIL ACTION NO. 02-CV-2756

v.

**ELIJAH MUTURI GLADYS
and
M.S. CARRIERS, INC.**

Defendants

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
SANCTIONS AND TO COMPEL DEFENDANT, ELIJAH MUTURI GLADYS, TO
PROVIDE FULL AND COMPLETE ANSWERS TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS**

I. **Defendant's Failure To Obey This Honorable Court's August 26, 2002 Order Warrants
Sanctions**

Pursuant to Fed.R.Civ.P. 37(2):

- (2) If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
- (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure

Plaintiffs assert that due to Defendant's noncompliance with the Court's August 26, 2002 Orders, Defendant should be precluded from asserting any defenses to liability in this matter and pay \$500.00 in attorney's fees to Plaintiffs.

Therefore, Plaintiffs request that sanctions be imposed against Defendant and they should be compelled to provide full and complete answers to Plaintiffs' discovery requests within five (5) days from the date of this Court's Order.

II. Even Though Defendant May No Longer Live In This Country, His Deposition Can Still Be Taken

Defense counsel argues that due to Defendant's absence from this country, he can not be produced for deposition or answer Plaintiffs' discovery requests. Plaintiffs contend that there are alternative methods in which to produce Defendant, Elijah Muturi Gladys, for his deposition. Counsel for the parties can arrange for a videotape deposition or some other alternative, which would allow Defendant's deposition testimony to be taken. Furthermore, defense counsel can send Plaintiffs' discovery requests to him in Africa to be completed and verified.

Therefore, Plaintiffs request that the aforementioned sanctions be imposed against Defendant and he should be produced for deposition and compelled to provide full and complete answers to Plaintiffs' discovery requests within five (5) days from the date of this Court's Order.

III. Plaintiffs Have Been Prejudiced By Defendant's Refusal To Obey This Honorable Court's August 26, 2002 Orders

The discovery deadline in this matter is September 23, 2002. Plaintiffs have provided all answers to Defendant's written discovery in a complete and timely fashion. As the discovery deadline in this matter has already past, Plaintiffs have been severely prejudiced by Defendant's

refusal to provide answers to their written discovery requests and all documents responsive thereto.

Therefore, Plaintiffs request that sanctions be imposed against Defendant and they should be compelled to provide full and complete answers to Plaintiffs' discovery requests within five (5) days from the date of this Court's Order.

IV. Conclusion

For all of the foregoing reasons, Plaintiffs respectfully request this Honorable Court to enter an Order precluding Defendant from making any defenses to Plaintiffs' claims regarding liability; imposing \$500.00 in sanctions against Defendant, Elijah Muturi Gladys; and compelling Defendant to be produced for deposition and to provide full and complete answers to Plaintiffs' discovery requests and all documents responsive thereto from Defendant within five (5) days from the date of said Order.

Respectfully submitted,

LAW OFFICES OF FRANCIS J. CURRAN, JR.

Dated: _____

BY: _____

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